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ABSTRACT

This document describes major provisions of the Anti-Drug Abuse Amendments Act of 1988, a federal law relating to enforcement of controlled substances laws which authorizes over two billion dollars for anti-drug activities. Provisions of the Act relating primarily to drug abuse education, prevention or treatment and regulation of the manufacture, distribution, import and export of controlled substances are not described in this document. These topics are discussed: (1) coordination of national drug policy; (2) state and local justice assistance grants, including the drug control and system improvement grant program, director's discretionary grants, and regional information sharing systems grant program; (3) drug user accountability, including eligibility for public housing, federal benefits, and drug-free workplace provisions; (4) transfer of forfeited property to state or local enforcement agencies; (5) money laundering; (6) new criminal penalties; (7) civil penalties for possession of personal use amounts of controlled substances; (8) experimental testing of criminal defendants and driver's license applicants; and (9) Federal Aviation Administration regulations and fines. (ABL)

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PROVISIONS OF ANTI-DRUG ABUSE AMENDMENTS ACT OF 1988 RELATING TO DRUG LAW ENFORCEMENT

INFORMATION MEMORANDUM 89-1

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April 12, 1989

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Wisconsin Legislative Council Staff
April 12, 1989

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Information Memorandum 89-1

PROVISIONS OF ANTI-DRUG ABUSE AMENDMENTS ACT OF 1988 RELATING TO DRUG LAW ENFORCEMENT

INTRODUCTION

This Information Memorandum was prepared for the Special Committee on Drug Law Enforcement. It describes major provisions of the Anti-Drug Abuse Amendments Act of 1988 [P.L. 100-690] relating to enforcement of controlled substances laws. Provisions of the Act relating primarily to drug abuse education, prevention or treatment and regulation of the manufacture, distribution, import and export of controlled substances are not described in this Memorandum.

The Anti-Drug Abuse Amendments Act of 1988 was approved by Congress on October 22, 1988 and signed into law by President Reagan on November 18, 1988. The Act authorizes over $2 billion for anti-drug activities and appropriates $500 million for fiscal year 1989.

This Memorandum is organized as follows:

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A. COORDINATION OF NATIONAL DRUG POLICY

Title I, Subtitle A, of the Act establishes the Office of National Drug Control Policy in the Executive Office of the President, headed by a director with a deputy director for supply reduction and a deputy director for demand reduction. A Bureau of State and Local Affairs, headed by an associate director for drug control policy, is also created. The director, deputy directors and associate director are all appointed by the President, subject to Senate confirmation.

The Act eliminates the National Drug Enforcement Policy Board, the National Narcotics Border Interdiction System and the White House Drug Abuse Policy Office.

President Bush has appointed former Education Secretary William Bennett as the Director of the new Office of National Drug Control Policy.

Under the Act, the director must prepare a national drug control strategy and make recommendations to the President on changes in the organization, management and budgets of federal departments and agencies engaged in drug enforcement. The President must submit the national drug control strategy to Congress within 180 days after the first director of the Office of National Drug Control Policy is confirmed by the Senate. Thereafter, the strategy must be submitted to Congress annually by February 1.

B. STATE AND LOCAL JUSTICE ASSISTANCE GRANTS

Title VI, Subtitle C, of the Act establishes the Bureau of Justice Assistance, within the Department of Justice, under general authority of the Attorney General. The Bureau is headed by a director, appointed by the President. The director is in charge of administering grants to eligible states and cooperating with and providing technical assistance to states and local units of government.

Under the Act, three grant programs are to be administered by the Bureau of Justice Assistance. These grant programs are continuations of grant programs established by the Anti-Drug Abuse Act of 1986.

1. Drug Control and System Improvement Grant Program

The first of the three programs is the Drug Control and System Improvement Grant Program. Under this Program, grants are provided to states to assist states and local units of government in improving the functioning of the criminal justice system and developing drug control

strategies. According to the Wisconsin Office of Justice Assistance (OJA), Wisconsin will receive $2.8 million under this grant program for federal fiscal year 1989. The OJA expects to receive the money in the Spring of 1989.

Under this Program, a portion of each state's grant, determined by application of a formula specified in the Act, must be passed through directly to local units of government. In Wisconsin, approximately 65% of the grant money must be passed through to local units of government. Local units of government which wish to receive grants must submit applications to the OJA. The applications are reviewed by the Governor's Council on Law Enforcement and Crime and, based upon the Council's recommendations, the Governor determines which units of local government will receive grants. Each state agency or local unit of government receiving a grant must provide a matching amount equal to 25% of the grant. The State of Wisconsin provides local units of government with 3/5ths of the required local match.

2. Director's Discretionary Grants

Under the second grant program, the director of the Federal Bureau of Justice Assistance may award discretionary grants to public or private agencies and private nonprofit organizations to be used for providing educational and training programs for criminal justice personnel, technical assistance to states and local units of government, demonstration programs and national and multijurisdictional projects. According to Nathaniel Robinson, OJA, to date, the City of Milwaukee is the only entity in Wisconsin that has applied for a discretionary grant.

3. Regional Information Sharing Systems Grant Program

Finally, the Act continues the Regional Information Sharing Systems Grant Program. Under this Program, grants may be made for maintaining and operating information sharing systems used by law enforcement agencies in addressing multijurisdictional offenses and conspiracies. Many law enforcement agencies in Wisconsin are members of the Mid-States Organized Crime Information Center, which is located in St. Louis, Missouri. According to Mr. Robinson, the Center will receive funding under the Regional Information Sharing Systems Grant Program.

C. DRUG USER ACCOUNTABILITY

1. Eligibility for Public Housing

Title V, Subtitle C, of the Act provides for termination of the tenancy of any public housing tenant if that tenant, any member of the tenant's household or any guest of the tenant engages in criminal activity, including drug-related criminal activity, on or near public housing premises.

2. Eligibility for Federal Benefits

Title V, Subtitle F, of the Act provides that any person convicted of possession or distribution of illegal drugs, under state or federal law, shall be denied any or all of certain federal benefits. The federal benefits which may be denied include grants, contracts, loans or professional or commercial licenses provided by a U.S. government agency or by appropriated federal funds. They do not include any retirement, welfare, Social Security, health, disability veterans' benefit, public housing or similar benefit or any other benefit for which payment or services are required for eligibility.

If the individual is convicted of distribution of controlled substances, the individual shall:

a. At the discretion of the court, for a first conviction, be ineligible for any or all of the covered federal benefits for up to five years.

b. At the discretion of the court, for a second conviction, be ineligible for any or all of the covered federal benefits for up to 10 years.

c. For a third or subsequent conviction, be permanently ineligible for all of the covered federal benefits.

If the individual is convicted of possession of a controlled substance, the individual shall:

a. At the discretion of the court for a first conviction: (1) be ineligible for all of the covered federal benefits for one year; (2) be required to successfully complete an approved drug treatment program which includes periodic testing; (3) be required to perform appropriate community service; or (4) any combination of (1) to (3).

b. For a second or subsequent conviction, be ineligible for all of the covered federal benefits for up to five years. In addition, the court may require the individual to successfully complete an approved drug treatment program which includes periodic testing or perform appropriate community service. The court may require that completion of a drug treatment program or community service shall be a requirement for reinstatement of the federal benefits.

The benefits denied an individual convicted of distribution of controlled substances may not include benefits relating to long-term drug treatment programs for addiction if the individual declares herself or himself to be an addict; there is a reasonable body of evidence to substantiate that declaration; and the individual submits herself or himself to a long-term treatment program for addiction or is deemed to be rehabilitated. The penalties and conditions which may be imposed for possession of controlled substances shall be waived under similar circumstances.

The period of ineligibility for federal benefits for either distribution or possession shall be suspended if the individual completes a supervised drug rehabilitation program after becoming ineligible for benefits; has otherwise been rehabilitated; or has made a good faith effort to gain admission to a supervised drug rehabilitation program but is unable to do so because of inaccessibility or unavailability of such a program or because the individual is unable to pay for the program.

The Act requires the President to transmit to Congress a report which, among other things, outlines the role of the state courts in implementing these penalties, by May 1, 1989.

3. Drug-Free Workplace Provisions

Under Title V, Subtitle D, of the Act, any person, other than an individual, who receives a federal contract or a federal grant must provide a drug-free workplace. The Act specifies that in order to provide a drug-free workplace, each contractor or grantee must:

a. Publish a statement notifying employes that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employes for violations of the prohibition;

b. Establish a drug-free awareness program to inform employes about the dangers of drug abuse in the workplace, the employer's policy of maintaining a drug-free workplace, any available drug counseling,

rehabilitation or employe assistance programs and the penalties that may be imposed upon employes for drug abuse violations;

c. Require each employe to notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

d. Notify the contracting or granting agency within 10 days after receiving notice of an employe conviction that an employe has been convicted under a criminal drug statute for a violation occurring in the workplace;

e. Impose a sanction on, or require participation in a drug abuse assistance or rehabilitation program by any employe who is convicted under a criminal drug statute; and

f. Make a good faith effort to continue to maintain a drug-free workplace.

Any contract or grant awarded by a federal agency is subject to termination or suspension of payments, or both, and the contractor or grantee shall be subject to suspension or debarment if the head of the contracting or granting agency determines that:

a. The contractor or grantee made a false certification regarding its drug-free workplace requirements;

b. The contractor or grantee failed to carry out the requirements for a drug-free workplace; or

c. Such a number of the contractor's or grantee's employes has been convicted of criminal drug statute violations occurring in the workplace as to indicate that the contractor or grantee failed to make a good faith effort to provide a drug-free workplace.

The Act sets forth the procedures to be followed in suspension of payments, termination or suspension or debarment proceedings.

D. TRANSFER OF FORFEITED PROPERTY TO STATE OR LOCAL ENFORCEMENT AGENCIES

The Act makes several amendments to the forfeiture provisions of the Federal Controlled Substances Act, which is the primary federal statute governing controlled substances [Title 21, ch. 13, U.S. Code]. Under s. 511 (e) of that statute, if a state or local law enforcement agency participates in a drug law enforcement effort with a federal law enforcement agency which results in the forfeiture of property of the

defendant, the federal agency may transfer some of the proceeds of the forfeiture to the state or local agency.

Title VI, Subtitle B, of the Act requires the Attorney General to assure that any forfeited property transferred to a state or local law enforcement agency under s. 511 (e) meets both of the following requirements:

1. The value of the property transferred bears a reasonable relationship to the degree of direct participation by the state or local agency in the law enforcement effort resulting in the forfeiture, taking into account the total value of all property forfeited and the total law enforcement effort with respect to the violation on which the forfeiture is based.

2. The property is not transferred to circumvent any requirement of state law that prohibits forfeiture or limits use or disposition of property forfeited to state or local agencies.

These requirements apply after September 30, 1989.

E. MONEY LAUNDERING

Title VI, Subtitle E, of the Act contains several provisions designed to inhibit the laundering of money related to drug crimes.

The Act prohibits financial institutions from issuing a bank check, cashier's check, traveler's check or money order to any individual in connection with a transaction or group of contemporaneous transactions which involves U.S. coins or currency in amounts greater than $3,000 unless the individual has an account with the institution and proves his or her identity by methods required by the U.S. Treasury Department.

The Act authorizes the Secretary of the Treasury to require financial institutions to maintain records to prevent evasions of the money laundering law by financial institutions. It also provides a civil penalty of not more than $10,000 for violations of U.S. Treasury Department regulations by any federally insured financial institution or director or employe of such an institution.

The Act requires the Secretary of the Treasury, in consultation with appropriate local law enforcement agencies, to study the feasibility of withdrawing the legal tender status of $100 Federal Reserve notes. Among the factors to be studied is whether these notes are being used predominantly for illegal activities, especially drug-related transactions.

F. NEW CRIMINAL PENALTIES

Title VI, Subtitle K, of the Act creates a new criminal penalty for endangering human life while illegally manufacturing a controlled substance. The new penalty is a fine of $250,000 or an amount equal to twice the gross amount of any pecuniary loss caused to another or any pecuniary gain accomplished as a result of the offense, whichever is greater, or imprisonment of not more than 10 years, or both the fine and imprisonment.

Title VI, Subtitle K, of the Act provides increased penalties for serious offenses involving the possession of "crack," including imprisonment of not less than five years nor more than 20 years, a fine of $250,000 or an amount equal to twice the gross amount of any pecuniary loss caused to another or any pecuniary gain accomplished as a result of the offense, whichever is greater, or both the fine and imprisonment.

For three-time drug felony offenders, the Act provides a penalty of life in prison without parole.

Title VII, Subtitle A, of the Act provides that a person who intentionally kills or causes, counsels, or commands the intentional killing of, an individual while engaging in certain drug-related felony offenses may be sentenced to death. Alternatively, the person shall be sentenced to imprisonment for not less than 20 years up to a life sentence. The Act requires special notice procedures, a separate sentencing hearing and consideration of aggravating and mitigating factors if the death penalty is sought. Additional procedural safeguards are provided and imposition of the death penalty is prohibited if the defendant is mentally retarded.

Title VII, Subtitle G, of the Act requires the revocation of probation, parole and supervised release of anyone found in the possession of a controlled substance, regardless of whether the original conviction was drug related.

G. CIVIL PENALTIES FOR POSSESSION OF PERSONAL USE AMOUNTS OF CONTROLLED SUBSTANCES

As an alternative to criminal prosecution, Title VI, Subtitle N, of the Act allows civil fines of up to $10,000 for possession of "personal use" amounts of certain controlled substances. The Attorney General is directed to specify, by regulation, what amounts constitute "personal use amounts." A civil penalty may not be assessed if the individual was previously convicted of a federal or state offense relating to a controlled substance.

The civil penalty may be assessed by the Attorney General after providing an opportunity for a hearing. The individual may contest the civil penalty in the appropriate U.S. district court. In such action, the individual has the right to a trial by jury, the right to counsel and the right to confront witnesses. The record of a person against whom such a civil penalty is assessed may be expunged after three years if certain conditions, including the payment of the penalty assessment and submission to a drug test which shows that the individual is drug free, are met.

Title VI, Subtitle B, of the Act directs the Attorney General and the Secretary of State to prescribe regulations to expedite procedures for the seizure of conveyances in cases involving the possession of personal use quantities of a controlled substance.

H. EXPERIMENTAL TESTING OF CRIMINAL DEFENDANTS AND DRIVER'S LICENSE APPLICANTS

Title VIII, Subtitle G, of the Act directs the director of the Administrative Office of the U.S. Courts to establish a demonstration program of mandatory testing of defendants in criminal cases. The Judicial Council of the United States shall select eight federal judicial districts for the demonstration program.

Under the program, defendants in criminal cases must be tested for drug use prior to trial and all probationers must submit to drug tests at least once every 60 days. Also, it shall be a mandatory condition of probation for any defendant convicted of a felony to refrain from any illegal use of drugs. After one year, a report must be made to Congress, describing the effectiveness of the demonstration program and recommending whether mandatory drug testing of defendants should be made more general and permanent.

Title IX, Subtitle A, of the Act directs the Secretary of Transportation to implement a pilot program in four states to require random drug testing for first-time applicants for a driver's license, prior to application and during the first year following issuance of the license. If the results of any test indicate that the person tested has used illegal drugs, the state must deny the individual driving privileges for at least one year.

I. FEDERAL AVIATION ADMINISTRATION REGULATIONS AND FINES

Title VII, Subtitle E, of the Act directs the Federal Aviation Administration to modify the current system for registering aircraft for the purpose of inhibiting the use of aircraft for transporting illegal

drugs. These modifications shall address certain deficiencies in the existing system, including the registration of aircraft to fictitious or unidentifiable individual persons, the use of false addresses or post office boxes by persons registering aircraft, the registration of aircraft to corporations and other entities to facilitate unlawful activities and frequent changes in registration markings on aircraft. The Act allows the assessment of civil penalties up to $50,000 for violations of registration requirements.

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